

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CRL.A.No. 784 of 2002()

SC 29/01 OF ADDL.DISTRICT AND SESSIONS FAST TRACK, (AD HOC-II)
KOZHIKODE

APPELLANT: 3RD ACCUSED

AMEER, S/O.ABDULLA, JAS MAHAL,
NADAKKUTHAZHA.P.O., VADAKARA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE

1. S.I. OF POLICE, VADAKARA POLICE STATION.

2. STATE REP; BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01/03/2007, ALONG WITH CRL.A.NO.832/2002, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J.M.JAMES, J.

Crl.A Nos.784/2002(A) and 832/2002(C)

Dated this the 1st day of March, 2007

J U D G M E N T

The accused, three in number, were found carrying liquor in violation of the provisions of the Abkari Act, in short 'the Act', as detected by PW.1, a Police Constable, who was on process duty and travelling in a bus bearing registration No.KRC 6480 plying from Thalassery to Vadakara. PW.1 therefore, directed the driver to take the bus to Vadakara Police Station. On information from PW.1, PW.2, the Head Constable of the station and PW.5, the Circle Inspector of the same police station searched accused 1 to 3. The first accused was found carrying four bottles of Crown XXX rum, each bottle of 750 ml capacity. He was also found in possession of one hardboard packet, wherein, on search, found containing 30 bottles of McDowell Brandy, each containing 375 ml. Thus, the total quantity seized from the possession of the first accused was 14.25 litres.

2. Similarly, on body search of second accused, five bottles of 750 ml each of Pilot XXX rum was found tied to his

waist as done by the first accused. He also was found carrying hard board packet, which, on search, found containing 24 bottles of 375 ml Honeybee brandy. Thus the total quantity of liquor seized from his possession was 12.75 litres. On search of the body of the third accused, he was found carrying Royal Gold Cup whisky, two bottles of 750 ml each, the total quantity thus seized from him, being 1.50 litres.

3. PW.5 seized the entire quantity of liquor, as stated above, under Exhibit P1 seizure mahazar attested by PW.3. All the three accused were proceeded against, according to the law. PW.6, the Head Constable, continued with the investigation and on completion, he filed final report under Section 55(a) of the Act and also Rule 9 of the Foreign Liquor Rules, in short 'the Rules'.

4. The prosecution examined six witnesses and marked eight documents. Nine material objects were also marked. On appreciation of the evidence, the learned Additional Sessions Judge, Fast Track Court (Ad hoc-II), Kozhikode, found all the three accused guilty and, therefore, convicted and

sentenced them thereunder. Accused 1 and 2 being directed to undergo rigorous imprisonment for three years and also to pay a fine of rupees one lakh each and in default to undergo simple imprisonment for six months each. The third accused was directed to undergo rigorous imprisonment for two years and, pay a fine of rupees one lakh and in default to undergo simple imprisonment for six months.

5. Crl.A.No.832/2002, preferred by accused 1 and 2, represented by Adv.Sunny Mathew and, Crl.A.No.784/2002, preferred by the third accused, represented by Adv.T.G.Rajendran, challenge the above conviction and sentence. When the appeal came up for consideration, the contentions of the appellants were of two fold. First is that there is no oral or documentary evidence to show that there was an import of material objects, seized from the appellants, having imported from any place outside the State of Kerala, in violation of Rule 9 of the Rules. The second point being, from the material objects seized, the quantity that has been sent for chemical analysis comes only within the permitted quantity and,

the other portion had not been scientifically tested and proved as liquor, under Section 3(10) of the Act. Therefore, prayed that the prosecution had failed to prove that any quantity had been possessed by any of the appellants in excess of the permitted quantity which was 1.5 litres as per S.R.O 127/1999.

6. The evidence on record clearly show that 750 ml of Crown XXX rum and 375 ml of McDowell brandy were taken as sample from the seized materials of the first accused and sent for chemical analysis. Thus, the total quantity is 1.125 litres. Similarly, from the second accused 750 ml Pilot XXX rum and 375 ml of Honeybee brandy were sent for chemical analysis. Thus total quantity sent for chemical analysis being 1.125 litres. In respect of the third accused, one bottle of 750 ml of Royal Gold Cup whisky was sent for chemical analysis. Exhibit P7 is the chemical analysis report. It contains the percentage of ethyl alcohol in each material. The appellants do not contend that the quantity seized is not containing ethyl alcohol but their contentions are entirely different as stated above. As discussed earlier, the evidence adduced by the prosecution do not show

that all these material objects were transported from outside Kerala. Therefore, there is nothing on record to show that Rule 9 of the Rules is attracted.

7. The permitted quantity of liquor, as per S.R.O 127/1999 published on 05/02/1999, that could be possessed and transported without permit was 1.5 litres at the relevant time. The prosecution under Exhibit P7, in respect of appellants 1 and 2, proved that though they were found to be in possession of 14.25 litres, 12.75 litres and 1.50 litres, respectively, only 1.125 litres in respect of accused 1 and 2 and 750 ml in respect of the third accused, were found to be tested and established as having possessed by them. Therefore, under S.R.O. 127/1999, they were possessing liquor, which is within the permitted quantity of 1.5 litres.

8. According to **Krishnankutty vs. State of Kerala** [2005 (3) KLT 568], the prosecution has to prove that a person has possessed in excess of the permitted quantity of liquor. In the case at hand, the prosecution has sent for chemical analysis as discussed above only, 1.125 litres in respect

of appellants 1 and 2 and only 750 ml in respect of the third accused. Therefore, all of them were carrying liquor only within the permitted quantity. The remaining quantity seized are not established by the prosecution as coming under Section 3(10) of the Act and, therefore, cannot be accepted as having been possessed by the accused at the time of the seizure under Exhibit P1.

9. In view of the above discussions, I find that the prosecution has failed to establish a case under Section 55(a) of the Act and Rule 9 of the Rules. Therefore, the conviction and sentence passed against these appellants-accused are set aside. They are set at liberty forthwith cancelling their bail bonds.

Both these appeals are allowed as above.

(J.M.JAMES)
Judge

ms

J.M.JAMES, J.

Crl.A Nos.784/2002(A)
and 832/2002(C)

J U D G M E N T

1st March, 2007